

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X
ALDO MITCHELL, :
 :
 Petitioner, :
 :
 -against- :
 : 04 Civ. 9672 (JFK)
 : 96 Cr. 126 (JFK)
 : **OPINION and ORDER**
UNITED STATES OF AMERICA, :
 :
 Respondent. :
- - - - -X

APPEARANCES:

For Petitioner Aldo Mitchell:

JOYCE C. LONDON, ESQ.
20 Vesey Street, Suite 400
New York, New York 10007

For Respondent United States of America:

DAVID N. KELLEY,
United States Attorney for the
Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Of Counsel: AUSA Steven R. Peikin

JOHN F. KEENAN, United States District Judge

JOHN F. KEENAN, United States District Judge:

Before the Court is the petition of Aldo Mitchell ("Mitchell") to vacate, set aside or correct his sentence, pursuant to 28 U.S.C. § 2255. For the reasons that follow, the petition is dismissed as untimely.

Background

Mitchell was charged in Counts One, Two, Four, Five, Six, Seven, Eight, and Ten of a superseding twelve-count indictment filed on January 12, 2000.

Count One charged Mitchell and others with conducting and participating in the affairs of a racketeering enterprise, namely, the "148th Street Organization" from the late 1980's through June 1999, through a pattern of racketeering activity that included murders, attempted murders, robberies, extortion and narcotics offenses, in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c). Count Two charged Mitchell and others with RICO conspiracy, in violation of 18 U.S.C. § 1962(d).

Counts Four through Eight charged Mitchell and others with various offenses in connection with a July 4, 1997 attempted robbery and shooting of Eric Connor, a drug dealer. Count Four charged the defendants with assault with a dangerous weapon in aid of racketeering, in violation of 18 U.S.C §§ 1959(a)(3) and 2. Count Five charged the defendants with attempted murder in

aid of racketeering, in violation of 18 U.S.C. §§ 1959(a)(5) and 2. Count Six charged the defendants with conspiracy to commit robbery, in violation of 18 U.S.C. § 1951. Count Seven charged the defendants with attempted robbery, in violation of 18 U.S.C. §§ 1951 and 2. Count Eight charged the defendants with using and carrying a firearm in connection with a crime of violence, in violation of 18 U.S.C §§ 924(c) and 2.

Count Ten charged Mitchell and others with conspiring to distribute and to possess with intent to distribute cocaine and cocaine base ("crack") from the late 1980's through June 1990, in violation of 21 U.S.C. §§ 812, 841(b)(1)(A) and 846.

On July 28, 2000, after an eleven-week trial, a jury convicted Mitchell on Count Two (RICO conspiracy) and Counts Six and Seven (conspiracy to commit robbery and attempted robbery).¹ The jury failed to reach a verdict on Counts One, Four, Five and Ten and acquitted Mitchell on Count Eight. On March 26, 2001, the Court sentenced Mitchell to a total of 360 months in prison, to be followed by three years' supervised release. The Court of Appeals for the Second Circuit affirmed Mitchell's conviction on November 21, 2002. United States v. Mitchell, 51 Fed. Appx. 355 (2d Cir. 2002).

¹ A time line summarizing the four years of dates relevant to the instant motion appears infra at page A.1.

Mitchell's co-defendant, Irving Mason, was convicted on the same day of several counts in the indictment. The Court sentenced Mason to thirty years' imprisonment as well. See Mason v. United States, No 04 Civ. 2198(JFK), 2005 WL 1902776 at *1 (S.D.N.Y. Aug. 9, 2005). The Court of Appeals affirmed Mason's conviction in Mitchell, cited in the preceding paragraph. Mason petitioned the Supreme Court of the United States for a writ of certiorari. The Court denied the petition on March 24, 2003. Mason v. United States, 538 U.S. 939 (2003). Mason's certiorari petition is important for reasons that soon will become clear.

Mitchell sent a letter to this Court dated December 13, 2003, requesting that counsel be appointed to assist him with respect to the viability and advisability of filing a § 2255 motion. (London Aff., Exh. A). On January 7, 2004, the Court assigned James Roth, Esq. as counsel to Mitchell under the Criminal Justice Act ("CJA"). On June 15, 2004, Mr. Roth informed the Court that he was required to withdraw from the case because of a conflict. (Id., Exh. C). By Order dated June 30, 2004, the Court assigned Joyce London, Esq. as Mitchell's new CJA counsel. Mr. Roth notified Mitchell of his withdrawal as counsel by letter dated July 29, 2004. (Id., Exh. D).

Ms. London claims that she tried to gather information about Mitchell's case during July and August 2004, but without success. (Id. ¶ 12-13). On August 3, 2004, the Court's Deputy

faxed Ms. London, at her request, a copy of Mitchell's judgment and conviction. (Id., Exh. H). Ms. London claims that the fax was sent on August 23, 2004, (Id. ¶ 13), but the fax cover sheet clearly is marked "8-3-04." In any event, Ms. London apparently had not notified Mitchell of her efforts because on August 17, 2004, Mitchell informed the Court by letter that he had not heard from Ms. London and that he wished to preserve his § 2255 rights. (Id., Exh. F). On August 20, 2004, Ms. London left New York for vacation. Ms. London claims that she did not see the facsimile from the Court until sometime after the date of her return, September 8, 2004. On September 16, 2004, the Court forwarded Mitchell's letter from August 17, 2004 to Ms. London. On September 20, 2004, Ms. London contacted Mitchell. She claims that she tried to get Mitchell's files from his previous lawyers, but again without success. Complicating the project was the fact that the office of Mitchell's trial counsel was destroyed on September 11, 2001. On November 2, 2004, Ms. London filed Mitchell's § 2255 petition. (Id. ¶¶ 13-19).

Mitchell alleges in his petition that (1) his sentence on Counts Two, Seven and Eight was unconstitutional under Blakely v. Washington, 542 U.S. 296 (2004), and (2) the inclusion of relevant conduct in his Guidelines sentencing calculation was tainted by the failure of the prosecution to disclose evidence favorable to him. (Mitchell Br. at 4). The Government opposes

the petition and urges the Court to dismiss the petition as untimely because Mitchell filed the petition after the expiration of the one year limitations period established by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). (Gov't Br. at 16-19).

Discussion

The first issue is whether Mitchell's § 2255 petition was timely. The one-year AEDPA statute of limitations began to run on the date that Mitchell's conviction became final. See 28 U.S.C. 2255(1). Mitchell contends that his conviction became final on March 24, 2003, which is the date that the Supreme Court denied "[h]is" certiorari petition, and that he had until March 23, 2004 to file his § 2255 petition. (Mitchell Br. at 13). Mitchell concedes that his petition missed the deadline, but he argues that the limitations period should be equitably tolled.

In calculating the filing deadline, Mitchell's counsel assumes that the Supreme Court denied certiorari petitions with respect to Mason and Mitchell. According to the Supreme Court and Second Circuit dockets, this is not so. Mason's Supreme Court docket reflects a certiorari denial on March 24, 2003. (See infra, page A.2). His Second Circuit docket shows receipt of the Supreme Court's Order on March 27, 2003. (See infra, page A.3-6). By contrast, Mitchell's name appears nowhere in the Supreme Court docket, and neither his Second Circuit docket nor the Second

Circuit docket for the consolidated case shows a Supreme Court order denying certiorari as to Mitchell. (See infra, page A.7-10, A.11-27). This Court has consulted the appropriate clerks at the Supreme Court and the Second Circuit, and they have confirmed this information. The Court therefore concludes that Mitchell, unlike Mason, did not petition the Supreme Court for certiorari, and that Mitchell's counsel has incorrectly fixed the starting and ending points for the one-year statute of limitations.

A conviction becomes final when the Supreme Court "affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires." Clay v. United States, 537 U.S. 522, 527 (2003). Under Supreme Court Rule 13.1, petitions for certiorari are timely if filed in the Supreme Court no later than 90 days after the entry of judgment in the circuit court. The judgment was filed in Mitchell's Second Circuit docket on November 21, 2002. Mitchell's time to file a certiorari petition expired 90 days later, on February 19, 2003. He therefore had until February 19, 2004 to file a § 2255 petition, not March 23, 2004, as his counsel contends. Mitchell did not file the petition until 257 days later, on November 2, 2004.

Mitchell seeks equitable tolling because Mr. Roth, who was assigned on January 7, 2004, failed to inform the Court of his conflict for six months. Mitchell also argues that Mr. Roth

failed to verify the statute of limitations and failed to act accordingly. Relying on Baldayaque v. United States, 338 F.3d 145 (2d Cir. 2003), and Spitsyn v. Moore, 345 F.3d 796 (9th Cir. 2003), Mitchell argues that Mr. Roth's actions were so "incompetent" and "egregious" as to render his circumstances "extraordinary" for the purposes of equitably tolling the one-year period. (Mitchell Br. at 15).

The Court disagrees. In Baldayaque, the defendant's family retained an attorney in February 1997, only days after the Second Circuit affirmed his conviction. Baldayaque, 338 F.3d at 148. One month later, the family members asked the attorney to file a § 2255 petition, but the attorney responded that the time to file such a petition had expired. Id. In actuality, over fourteen months remained. Id. at 148-49. Instead, the attorney decided to file an early deportation motion. Id. at 149. Baldayaque's representative called the attorney every month, but the attorney assured her that he was "waiting for a court date." Id. In November 1997, the attorney filed the motion but cited no authority. Id. The time to file the § 2255 motion expired in May 1998. Id. at 150. The deportation motion was denied in June 1998. Id. at 149. The attorney thereupon informed the family that there was nothing he could do. Id. The Court of Appeals found these actions "extraordinary." Id. at 152.

Mitchell's case is not "extraordinary." Mitchell was not the victim of fifteen months of astounding incompetence on his attorney's part, as was Baldayaque. Mr. Roth took over Mitchell's case with only 43 days remaining to file the § 2255 petition. This was not the attorney's fault. Mitchell did not apply to the Court for appointment of a CJA attorney to handle the petition until nearly ten months after his conviction became final. As Ms. London pointed out in her affidavit, a "lengthy process" was necessary to obtain Mitchell's file, particularly given the loss of the trial counsel's papers on 9/11. (London Aff. ¶¶ 16, 18). She did not file Mitchell's petition until over four months after her appointment as his counsel. Under these circumstances, it can hardly be termed "extraordinary" that Mr. Roth, who had only 43 days, missed the deadline. Even assuming arguendo that Mr. Roth erred, the Circuit has found "attorney error inadequate to create the 'extraordinary' circumstances equitable tolling requires." Smaldone v. Senkowski, 273 F.3d 133, 138 (2d Cir. 2001).²

²Mr. Roth's June 15, 2004 letter to the Court requested appointment of new § 2255 counsel. His July 29, 2004 letter to Mitchell ends with his wishing Mitchell "luck with your 2255." Even if Mr. Roth erroneously believed that time remained on the clock, the foregoing analysis is not altered. Mr. Roth's failure to inform the Court of his conflict until June 2004 does not change the analysis either. Even if Mr. Roth withdrew within one or two weeks of his assignment, the new attorney would have been faced with a filing deadline of less than 43 days. Failure to meet this deadline would not have been "extraordinary."

The Court notes that Baldayaque did not end with the finding of extraordinary circumstances. The Circuit remanded to the district court for a finding as to Baldayaque's reasonable diligence in bringing his petition. Id. at 152-53. The Court held: "The presence of extraordinary circumstances is not enough . . . to justify equitable tolling. A petitioner must also show that he acted with reasonable diligence, and that the extraordinary circumstances caused his petition to be untimely." Id. at 153.

Mitchell was not diligent during the period he seeks to toll. After his December 13, 2003 letter, he did not write to the Court again until August 17, 2004, over one month after Ms. London's appointment and well after the filing deadline. While Mitchell stated in this letter that he was in "desperate need of Professional help with . . . complicated issues," he shows a clear concern about the filing date for a \$ 2255 petition and that the petition may be "procedurally [sic] barred." (London Aff., Exh. F). This letter reveals Mitchell's command of the English language, despite the misspelling, and his understanding of his rights. He cannot argue, nor does he, that he should be excused from his obligation of reasonable diligence because he was unable to assess his attorney's work or comprehend legal material. See Doe v. Menefee, 391 F.3d 147, 175 (2d Cir. 2004). Unlike in Baldayaque, where the defendant's representative

contacted the attorney once every month for several months, there is no evidence in Mitchell's two letters, or anywhere else in the record, that Mitchell's attorneys ignored either his contacts or his instructions. See Baldayaque, 338 F.3d at 149.

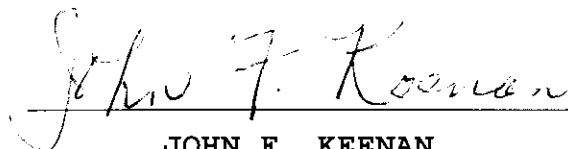
Spitsyn v. Moore, 345 F.3d 796 (9th Cir. 2003), like Baldayaque, provides Mitchell with no assistance. Even if it were appropriate for the Court to rely on Ninth Circuit precedent when our Circuit has spoken clearly on this issue, the fact pattern of Spitsyn is very similar to that of Baldayaque and dissimilar to the instant case. See Spitsyn, 345 F.3d at 801.

Conclusion

Mitchell's § 2255 petition is procedurally barred and is therefore dismissed. The Clerk is directed to close Case No. 04 Civ. 9672(JFK) and remove it from the Court's active docket.

SO ORDERED.

Dated: New York, New York
August 23, 2005

A handwritten signature in cursive script, reading "John F. Keenan", written over a horizontal line.

JOHN F. KEENAN
United States District Judge

ALDO MITCHELL TIMELINE

28 JUL 2000: Mitchell and Mason convicted.

26 MAR 2001: Mitchell sentenced to 30 years.

21 NOV 2002: Court of Appeals affirms convictions.
Judgment entered in docket as to Mitchell.

19 FEB 2003: Deadline for filing of certiorari petition.

24 MAR 2003: Supreme Court denies certiorari as to Mason.

13 DEC 2003: Mitchell requests new lawyer (3+ months left).

07 JAN 2004: Order: Mr. Roth appointed CJA counsel.
(43 days left to file 2255)

19 FEB 2004: Deadline to file Mitchell's § 2255 petition.

23 MAR 2004: Mitchell's proposed § 2255 deadline.

15 JUN 2004: Mr. Roth writes to Court: Needs to withdraw.

30 JUN 2004: Order: Ms. London appointed new counsel.

29 JUL 2004: Mr. Roth notifies Mitchell of withdrawal.

17 AUG 2004: Mitchell writes to Court: He has not heard from
Ms. London and wants to preserve 2255 rights.

20 AUG 2004: Ms. London leaves on vacation.

23 AUG 2004: Court faxes Mitchell's judgment and conviction
to Ms. London.

8 SEP 2004: Ms. London returns from vacation. Sees fax for
first time sometime afterward.

16 SEP 2004: Mitchell's August 17, 2004 letter forwarded from
Court to Ms. London and Government.

20 SEP 2004: Ms. London sends a letter to Mitchell.

2 NOV 2004: 2255 petition filed (257 days after deadline).

No. 02-9099 Status: DECIDED
 Title: Irving Mason, aka Spidey, Petitioner
 v.
 United States
Docketed: Lower Ct: United States Court of Appeals for the Second Circuit
February 21, 2003 (01-1249)

~~~Date~~~      ~~~Proceedings and Orders~~~  
Feb 14 2003      Petition for writ of certiorari and motion for leave to proceed in  
                         forma pauperis filed. (Response due March 23, 2003)  
Mar 4 2003      Waiver of right of respondent United States to respond filed.  
Mar 6 2003      DISTRIBUTED for Conference of March 21, 2003  
Mar 24 2003      Petition DENIED.  
\*\*\*\*\*

---

~~~Name~~~      ~~~Address~~~      ~~~Phone~~~  
Attorneys for Petitioner:
James E. Neuman Attorney for Petitioner 2124255191
 One Whitehall Street, 10th Flr
 New York, NY 10004

Party name: Irving Mason

Attorneys for Respondent:
Solicitor General U.S. Department of Justice
 Washington, DC 20530

Party name: United States

Westlaw.

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TO ORDER COPIES OF ANY DOCUMENTS LISTED BELOW, CALL WESTLAW COURTEXPRESS
1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply).

Court: US COURT OF APPEALS FOR THE SECOND CIRCUIT
Case Title: USA v. Mason
Appeal From: U.S. District Court
Panel: ALK JMcL SS 1705 :CA2 11/14/02 am
Panel date: 11/21/02
Filed On: 4/27/01

Case Information

Case Number: 01-1249
Fee Status: ifp granted
Case Type: Criminal
Appeal of Conviction
none

Nature of Suit:**LOWER COURT INFORMATION**

District Court Number: 0208-01
Lower Court Number: 96-cr-126
Trial Judge(s): John F. Keenan

Date Filed: 6/12/96
Date Order/Judgement: 4/18/01

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Date NOA Filed: 4/25/01

OTHER CASES

Prior Case(s):

Consolidated:

| Lead | Member | Start | End |
|----------|----------|---------|-----|
| 01- 1093 | 01- 1249 | 4/27/01 | -- |
| Lead | Member | Start | End |
| 01- 1093 | 01- 1101 | 4/20/01 | -- |
| Lead | Member | Start | End |
| 01- 1093 | 01- 1203 | 4/9/01 | -- |

NAMES

Party Name: UNITED STATES OF AMERICA
Party Type: Appellee
Attorney(s): Vernon Broderick, Esq.

[OR LD NTC ret]
212-637-2265

U.S. Attorney's Office Southern District of New York

1 St. Andrews Plaza

Attn: Brenda Lewis, Legal

Secretary

New York, 10007

Party Name: IRVING MASON
aka Spidey

Party Type: Defendant - Appellant

Attorney(s): Norman Reimer, Esq.

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[COR LD NTC cja]
Suite 770
212-267-2600

Gould, Reimer & Gottfried

233 Broadway

New York, NY 10279

DOCKET PROCEEDINGS

| ENTRY #: | DATE: | DOCKET ENTRY: |
|----------|----------|---|
| | 3/27/03 | Certified copy of Supreme Court order DENYING petition for writ of certiorari [2275450-1] by Appellant Irving Mason, endorsed on motion dated 2/27/03. dated 3/24/03. (cr18) [01-1249]
Order Document for Later Delivery |
| | 2/27/03 | Notice of filing petition for writ of certiorari for Appellant Irving Mason in 01-1249 dated 2/21/03 filed. Supreme Ct#: 02-9099. (cr18) [01-1249]
Order Document for Later Delivery |
| | 2/10/03 | Acco received in records room from team. (reg) [01-1093 01-1101 01-1203 01-1249]
Order Document for Later Delivery |
| | 1/10/03 | Attorney: Norman L. REIMER CJA: 20 Voucher = #: 3110166 (bfm) [01-1249]
Order Document for Later Delivery |
| | 12/18/02 | Notice to counsel re: Mandate issued on 12/18/02. (cr17) [01-1249]
Order Document for Later Delivery |
| | 12/18/02 | Judgment MANDATE ISSUED. (cr17) [01-1249]
Order Document for Later Delivery |
| | 11/21/02 | Notice to counsel of summary order filed 11/21/02. (cr14) [01-1249]
Order Document for Later Delivery |

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11/21/02 Judgment filed; judgment of the district court is
AFFIRMED by detailed order of the court without
opinion filed. (SS) [Entry Date: 11/21/02] (cr14)
[01-1249]
Order Document for Later Delivery

11/14/02 Case heard before KEARSE, McLAUGHLIN, SOTOMAYOR,
C.JJ. . (TAPE: CD dated: 11/14/02) (ca93) [01-1249]
Order Document for Later Delivery

4/27/01 Copy of notice of appeal and district court docket
entries on behalf of Appellant Irving Mason in
01-1249 filed. [01-1249] (cr17) [01-1249]
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END OF DOCUMENT

Westlaw.

01-1203

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TO ORDER COPIES OF ANY DOCUMENTS LISTED BELOW, CALL WESTLAW COURTEXPRESS
1-877-D0C-RETR (1-877-362-7387) (Additional Charges Apply).

Court: US COURT OF APPEALS FOR THE SECOND CIRCUIT
Case Title: USA v. Velasquez(Mitchell)
Appeal From: U.S. District Court
Panel: ALK JMcL SS 1705 :CA2 11/14/02 am
Panel date: 11/21/02
Filed On: 4/9/01

Case Information

Case Number: 01-1203
Fee Status: ifp granted
Case Type: Criminal
Appeal Sentence & Conviction
none

Nature of Suit:**LOWER COURT INFORMATION**

District Court Number: 0208-01
Lower Court Number: 96-cr-126
Trial Judge(s): John F. Keenan

Date Filed: 6/12/96
Date Order/Judgement: 3/26/01

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Date NOA Filed: 4/5/01

OTHER CASES

Prior Case(s):

Consolidated:

| Lead | Member | Start | End |
|----------|----------|---------|-----|
| 01- 1093 | 01- 1203 | 4/9/01 | -- |
| Lead | Member | Start | End |
| 01- 1093 | 01- 1101 | 4/20/01 | -- |
| Lead | Member | Start | End |
| 01- 1093 | 01- 1249 | 4/27/01 | -- |

NAMES

Party Name: UNITED STATES OF AMERICA
Party Type: Appellee
Attorney(s): Vernon Broderick, Esq.

[COR LD NTC ret]
212-637-2265

U.S. Attorney's Office Southern District of New York

1 St. Andrews Plaza

Attn: Brenda Lewis, Legal

Secretary

New York, 10007

Party Name: ALDO MITCHELL
aka AD

Party Type: Defendant - Appellant

Attorney(s): Susan G. Kellman, Esq.

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[COR LD NTC cja]
718-783-8200

Law Office of Susan G. Kellman, Esq.

25 8th Ave.

Brooklyn, NY 11217

DOCKET PROCEEDINGS

| ENTRY #: | DATE: | DOCKET ENTRY: |
|----------|----------|---|
| | 2/10/03 | Acco received in records room from team. (reg)
[01-1093 01-1101 01-1203 01-1249]
Order Document for Later Delivery |
| | 12/18/02 | Notice to counsel re: Mandate issued on 12/18/02.
(cr17) [01-1203]
Order Document for Later Delivery |
| | 12/18/02 | Judgment MANDATE ISSUED. (cr17) [01-1203]
Order Document for Later Delivery |
| | 11/21/02 | Notice to counsel of summary order filed 11/21/02.
(cr14) [01-1203]
Order Document for Later Delivery |
| | 11/21/02 | Judgment filed; judgment of the district court is
AFFIRMED by detailed order of the court without
opinion filed. (SS) [Entry Date: 11/21/02] (cr14)
[01-1203]
Order Document for Later Delivery |
| | 11/14/02 | Case heard before KEARSE, McLAUGHLIN, SOTOMAYOR,
C.JJ. . (TAPE: CD dated: 11/14/02) (ca93) [01-1203]
Order Document for Later Delivery |
| | 4/18/01 | FOR A LIST OF COMPLETE DOCKET ENTRIES PLEASE SEE
THE LEAD APPEAL, DOCKET NUMBER Lead Number:
01-1093(L). (cr11) [01-1203]
Order Document for Later Delivery |
| | 4/9/01 | Copy of notice of appeal and district court docket
entries on behalf of Appellant Aldo Mitchell in
01-1203 filed. [01-1203] (cr11) [01-1203]
Order Document for Later Delivery |

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1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply).

Court: US COURT OF APPEALS FOR THE SECOND CIRCUIT
Case Title: USA v. Ruggiero, et al
Appeal From: U.S. District Court
Panel: ALK JMcL SS 1705 :CA2 11/14/02 am
Panel date: 2/6/03
Filed On: 2/15/01

Case Information

Case Number: 01-1093
Fee Status: ifp granted
Case Type: Criminal
Appeal of Conviction
none
Nature of Suit:

LOWER COURT INFORMATION

District Court Number: 0208-01
Lower Court Number: 96-cr-126
Trial Judge(s): John F. Keenan

Date Filed: 9/28/92
Date Order/Judgement: 2/7/01

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Date NOA Filed: 2/14/01

OTHER CASES

Prior Case(s):

Consolidated:

| Lead | Member | Start | End |
|----------|----------|---------|-----|
| 01- 1093 | 01- 1101 | 4/20/01 | -- |
| Lead | Member | Start | End |
| 01- 1093 | 01- 1249 | 4/27/01 | -- |
| Lead | Member | Start | End |
| 01- 1093 | 01- 1203 | 4/9/01 | -- |

NAMES

Party Name: UNITED STATES OF AMERICA
 Party Type: Appellee

Attorney(s): Vernon Broderick, Esq.

[COR LD NTC ret]
 212-637-2265

U.S. Attorney's Office Southern District of New York

1 St. Andrews Plaza

Attn: Brenda Lewis, Legal

Secretary

New York, 10007

Party Name: LOUIS RUGGIERO, JR.
 Party Type: Defendant

Party Name: DAVID CLEARY
 Party Type: Defendant

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Party Name: MICHAEL PALAZZOLO
Party Type: Defendant

Party Name: ANTHONY CASTELLI
Party Type: Defendant

Party Name: RICHARD OLIVIERI
Party Type: Defendant

Party Name: ROBERT AULICINO
Party Type: Defendant

Party Name: DERRICK AUGUSTINE
Party Type: Defendant

Party Name: JAMES BROWN
Party Type: Defendant - Appellant

Attorney(s): James Brown

[COR LD NTC]

Westchester Correctional Facility

P.O. Box 380

Valhalla, NY 10595

Party Name: ROBERT CHERRY
Party Type: Defendant

Party Name: KEITH GREEN
Party Type: Defendant

Party Name: ALDO MITCHELL
aka AD

Party Type: Defendant - Appellant

Attorney(s): Susan G. Kellman, Esq.

[COR LD NTC cja]
718-783-8200

Law Office of Susan G. Kellman, Esq.

25 8th Ave.

Brooklyn, NY 11217

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Party Name: IRVING MASON
 aka Spidey

Party Type: Defendant - Appellant

Attorney(s): Norman Reimer, Esq.

 [COR LD NTC cja]
 Suite 770
 212-267-2600

 Gould, Reimer & Gottfried

 233 Broadway

 New York, NY 10279

DOCKET PROCEEDINGS

| ENTRY #: | DATE: | DOCKET ENTRY: |
|----------|---------|---|
| | 9/15/04 | Attorney: Kellman CJA: 20 Voucher = #: 4915109
(1143) [01-1093]
Order Document for Later Delivery |
| | 7/16/03 | Mandate receipt returned from the district court.
(ret) [01-1093]
Order Document for Later Delivery |
| | 3/10/03 | Attorney Steven A. FELDMAN CJA 20 voucher is being
tracked under voucher #33166 (bfm) [01-1093]
Order Document for Later Delivery |
| | 2/13/03 | Mandate receipt returned from the district court.
(rea) [01-1093]
Order Document for Later Delivery |
| | 2/10/03 | Acco received in records room from team. (reg)
[01-1093 01-1101 01-1203 01-1249]
Order Document for Later Delivery |
| | 2/6/03 | Notice to counsel re: Mandate issued on 2/6/03.
(cr17) [01-1101]
Order Document for Later Delivery |
| | 2/6/03 | Judgment MANDATE ISSUED. (cr17) [01-1101]
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2/6/03 Notice to counsel re: Mandate issued on 2/6/03.
(cr17) [01-1093]
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2/6/03 Judgment MANDATE ISSUED. (cr17) [01-1093]
Order Document for Later Delivery

2/6/03 Attorney Steven A. Feldman for James Brown has
been relieved. Party continued as pro se. (cr17)
[01-1093]
Order Document for Later Delivery

2/6/03 Order filed stating, Counsel for appellant James
Brown moves, pursuant to Anders v. California, 386
U.S. 738 (1967), to be relieved as appellant's
counsel. The Government moves for summary
affirmance. Upon due consideration, it is ORDERED
that the motions are GRANTED. (ALK, JMcL, SS by
LC) (cr17) [01-1101]
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2/6/03 Order FILED GRANTING motion for summary affirmance
and motion to be relieved as counsel [2243881-1]
by Appellant James Brown (see order filed 2/6/03).
(ALK, JMcL, SS by LC) (cr17) [01-1093]
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2/6/03 Order filed stating, Counsel for appellant James
Brown moves, pursuant to Anders v. California, 386
U.S. 738 (1967), to be relieved as appellant's
counsel. The government moves for summary
affirmance. Upon due consideration, it is ordered
that the motions are GRANTED. (ALK, JMcL, SS by
LC) (cr17) [01-1093]
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1/10/03 Attorney: Norman L. REIMER CJA: 20 Voucher = #:
3110166 (bfm) [01-1249]
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1/9/03 Appellant James Brown in 01-1093 motion for
summary affirmance (government's response as per
Order filed 11/7/02 by panel) FILED (w/pfs).
[2243881-1] (to panel) (cr17) [01-1093]
Order Document for Later Delivery

1/9/03 Appellee USA in 01-1101 motion for summary
affirmance (government's response as per Order
filed 11/7/02 for appellant "James Brown") FILED
(w/pfs). [2242662-1] (to Cal. Team) (cr17)
[01-1101]

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1/7/03 Certified copy of (edit text) receipt returned
from the district court. (rea) [01-1093]
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12/18/02 Notice to counsel re: Mandate issued on 12/18/02.
(cr17) [01-1249]
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12/18/02 Judgment MANDATE ISSUED. (cr17) [01-1249]
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12/18/02 Judgment MANDATE ISSUED. (cr17) [01-1203]
Order Document for Later Delivery

11/21/02 Notice to counsel of summary order filed 11/21/02.
(cr14) [01-1249]
Order Document for Later Delivery

11/21/02 Judgment filed; judgment of the district court is
AFFIRMED by detailed order of the court without
opinion filed. (SS) [Entry Date: 11/21/02] (cr14)
[01-1249]
Order Document for Later Delivery

11/21/02 Notice to counsel of summary order filed 11/21/02.
(cr14) [01-1203]
Order Document for Later Delivery

11/21/02 Judgment filed; judgment of the district court is
AFFIRMED by detailed order of the court without
opinion filed. (SS) [Entry Date: 11/21/02] (cr14)
[01-1203]
Order Document for Later Delivery

11/19/02 Appellant James Brown in 01-1093 supplemental
appendix filed with proof of service (to panel).
(cr17) [01-1093]
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11/19/02 Appellant James Brown in 01-1093 supplemental
brief filed with proof of service. Submitted as
per order filed 11/7/02 (to panel) (cr17) [01-1093]
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11/14/02 Case heard before KEARSE, MCLAUGHLIN, SOTOMAYOR,
C.JJ. (TAPE: CD dated 11/14/02)) (ra) [01-1093]
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11/7/02 Order FILED DENYING motion for summary affirmance [2242662-1] by Appellee USA, DENYING Anders appeal motion to be relieved as attorney [1879670-1], Charles Lavine (see order filed 11/7/02). (ALK, JMCL, SS by LC) (cr17) [01-1101]
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11/7/02 Order filed stating, appellant's counsel moves, pursuant to Anders v. California, 386 U.S. 738 (1967), to be relieved as appellant's counsel. The government moves for summary affirmance. Upon due consideration, it is ORDERED that the motions are DENIED without prejudice, because appellant's counsel has failed to satisfy the requirements of Anders. Counsel is directed to file a supplemental brief by 12/16/02 discussing (1) the Government's second information. (2) Brown's second cooperation agreement, and (3) the second plea allocation in the district court. The Government shall respond by 1/14/03. (ALK, JMCL, SS by LC) (cr17) [01-1101]
Order Document for Later Delivery

11/7/02 Notice to counsel re: Order issued on 11/7/02. (cr17) [01-1093]
Order Document for Later Delivery

11/7/02 Order FILED DENYING Anders appeal motion for summary affirmance [1893182-1], Vernon Broderick, DENYING Anders appeal motion to be relieved as attorney [1879666-1], Steven A. Feldman. (see order filed 11/7/02) (ALK, JMCL, SS by LC) (cr17) [01-1093]
Order Document for Later Delivery

11/7/02 Order filed stating, appellant's counsel moves, pursuant to Anders v. California, 386 U.S. 738 (1967), to be relieved as appellant's counsel. The government moves for summary affirmance. Upon due consideration, it is ORDERED that the motions are DENIED without prejudice, because appellant's counsel has failed to satisfy the requirements of Anders. Counsel is ordered to file a supplemental brief by 12/16/02 discussing (1) the Government's second information; (2) Brown's second cooperation agreement, and (3) the second plea allocation in the district court. The Government shall respond by 1/14/03. (ALK, JMCL, SS by LC) (cr17) [01-1093]
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10/31/02 Letter received from AUSA Steven R. Peikin re: requests that this matter be placed first on the calendar (to Cal. Team). (cr17) [01-1093]
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10/28/02 Record on appeal after index filed. (12 vols) (rev) [01-1093]
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10/3/02 Letter received from AUSA Steven R. Peikin re: that he will unavailable for argument on December 11-13, 2002 and February 17-21, 2003. (to Cal. Team) (cr17) [01-1093]
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9/23/02 Set for argument on 11/14/02 . [01-1093,01-1101,01-1203,01-1249] (ca90) [01-1093]
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9/12/02 Proposed for argument the week of 11/11/02. (ca90) [01-1093]
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8/29/02 Appellee USA in 01-1093 brief filed with proof of service. (cr17) [01-1093]
Order Document for Later Delivery

8/29/02 Notice to counsel re: Motion order issued on 8/29/02. (cr17) [01-1093]
Order Document for Later Delivery

8/29/02 Order FILED GRANTING motion for leave to file oversized appellee brief [2139615-1] by Appellee USA, endorsed on motion form dated 8/13/02. (by LBP) (cr17) [01-1093]
Order Document for Later Delivery

8/28/02 Appellee USA in 01-1093 appendix filed. (cr17) [01-1093]
Order Document for Later Delivery

8/13/02 Appellee USA in 01-1093 motion for leave to file oversized appellee brief FILED (w/pfs). [2139615-1] (to AA) (cr17) [01-1093]
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8/12/02 Appellee USA in 01-1093 appendix received. Problem: pending motion to file oversized appellee brief. (cr17) [01-1093]
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8/12/02 Appellee USA in 01-1093 brief RECEIVED. Problem: pending motion file an oversize appellee brief. (cr17) [01-1093]
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8/12/02 Notice to counsel motion order filed 8/12/02. (cr99) [01-1093]
Order Document for Later Delivery

8/12/02 Order FILED GRANTING motion for extended time [2138526-1] by Appellee USA, endorsed on motion form dated 8/8/02. Extended appellee's brief due date is 8/15/02. (AH) (cr99) [01-1093]
Order Document for Later Delivery

8/8/02 Appellee USA in 01-1093 motion extension of time to file brief. FILED (w/pfs). [2138526-1] (cr99) [01-1093]
Order Document for Later Delivery

7/16/02 Appellant Aldo Mitchell in 01-1093 defective Appellant brief cured. Satisfy defective document response due. (cr17) [01-1093]
Order Document for Later Delivery

7/16/02 Approved CJA voucher # 19473 for the amount of \$ 785.96 filed. (James Brown) (1135) [01-1093]
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7/16/02 Approved CJA voucher # 19483 for the amount of \$ 736.71 filed. (1135) [01-1093]
Order Document for Later Delivery

6/26/02 Notice to counsel re: Motion order issued on 6/26/02. (cr17) [01-1093]
Order Document for Later Delivery

6/26/02 Order FILED GRANTING motion for extended time to file appellee brief [2106887-1] by Appellee USA, endorsed on motion form dated 6/20/02. Extended appellee's brief due date is 8/8/02. (by AH) (cr17) [01-1093]
Order Document for Later Delivery

6/20/02 Appellee USA in 01-1093 motion to extend time to file appellee brief FILED (w/pfs). [2106887-1] (to AA) (cr17) [01-1093]
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6/7/02 Appellant Aldo Mitchell in 01-1093 appendix filed w/pfs. Number of volumes; 1. (cr17) [01-1093]

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6/7/02 Appellant Aldo Mitchell in 01-1093 brief FILED with proof of service. (cr17) [01-1093]
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6/7/02 Appellant Irving Mason and Charles Williams (Williams not a appellant in case) in 01-1093 sealed pre-sentence report received. (cr17) [01-1093]
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6/7/02 Appellant Aldo Mitchell in 01-1093 brief RECEIVED. Problem: Need appendix to the brief. (cr17) [01-1093]
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6/7/02 Appellant Aldo Mitchell in 01-1093 defective Appellant brief filed. Need appendix to the brief. Notice sent to party to correct by 7/8/02. (cr17) [01-1093]
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6/7/02 Transcript of Trial filed. (cr17) [01-1093]
Order Document for Later Delivery

6/7/02 Appellant Irving Mason in 01-1093 appendix filed w/pfs. Number of volumes; 1. (cr17) [01-1093]
Order Document for Later Delivery

6/7/02 Appellant Irving Mason in 01-1093 brief FILED with proof of service. (cr17) [01-1093]
Order Document for Later Delivery

5/22/02 Notice to counsel copy of order filed 5/22/02. (cr10) [01-1093]
Order Document for Later Delivery

5/22/02 Order FILED GRANTING motion for extended time [2082812-1] by Appellant Aldo Mitchell, endorsed on motion form dated 5/9/02. Extended appellant's brief due date is 6/7/02, . Extended appellee's brief due date is 7/8/02. Extended argument week as early as 8/19/02. NO FURTHER EXTENSIONS WILL BE GRANTED ABSENT EXTRAORDINARY CIRCUMSTANCES. (AH) (cr10) [01-1093]
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5/21/02 Notice to counsel re: Motion order issued on 5/21/02. (cr17) [01-1093]
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5/21/02 Order FILED GRANTING motion for leave to file oversized brief [2082818-1] by Appellant Irving Mason, brief not to exceed 15,000 words, endorsed on motion form dated 5/16/02. (by AH) (cr17) [01-1093]
Order Document for Later Delivery

5/16/02 Appellant Irving Mason in 01-1093 motion for leave to file oversized brief (up to 56 pages or 15,000 words) and to file this application late FILED (w/pfs). [2082818-1] (to AA) (cr17) [01-1093]
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5/9/02 Appellant Aldo Mitchell in 01-1093 motion to extend time to file brief FILED (w/pfs). [2082812-1] (to AA) (cr17) [01-1093]
Order Document for Later Delivery

5/9/02 Appellant Aldo Mitchell in 01-1093 defective motion to extend time cured. Satisfy defective document response due. (cr17) [01-1093]
Order Document for Later Delivery

4/29/02 Appellant Aldo Mitchell in 01-1093 defective Motion to extend time filed. Need motion on new motion form, need affidavit in support of motion and affidavit of service. Notice sent to party to correct by 5/15/02. (cr17) [01-1093]
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3/29/02 Pro se letter from Aldo Mitchell sent to attorney. (cr17) [01-1093]
Order Document for Later Delivery

3/28/02 Notice to counsel re: Motion order issued on 3/28/02. (cr17) [01-1093]
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3/28/02 Order FILED GRANTING motion for extended time to file brief [2047820-1] by Appellant Aldo Mitchell, endorsed on motion form dated 3/26/02. Extended appellant's brief due date is 5/3/02. Extended appellee's brief due date is 6/3/02. Extended argument week as early as 7/15/02. (by AH) (cr17) [01-1093]
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3/26/02 Appellant Aldo Mitchell in 01-1093 motion to extend time to file brief FILED (w/pfs). [2047820-1] (to AA) (cr17) [01-1093]
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3/4/02 Notice to counsel re: Motion order issued on 3/4/02. (cr17) [01-1093]
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3/4/02 Order FILED GRANTING motion for extended time to file brief and appendix [2028170-1] by Appellant Aldo Mitchell, endorsed on motion form dated 2/27/02. Extended appellant's brief due date is 3/29/02. Extended appellee's brief due date is 4/29/02. Extended argument week as early as 6/10/02. (by AH) (cr17) [01-1093]
Order Document for Later Delivery

2/27/02 Appellant Aldo Mitchell in 01-1093 motion to extend time to file brief and appendix and to file motion out of time FILED (w/pfs). [2028170-1] (to AA) (cr17) [01-1093]
Order Document for Later Delivery

2/22/02 Notice to counsel re: Motion order issued on 2/22/02. (cr17) [01-1093]
Order Document for Later Delivery

2/22/02 Order FILED GRANTING motion for extended time to file appellant's brief [2022799-1] by Appellant Irving Mason, endorsed on motion form dated 2/19/02. Extended appellant's brief due date is 3/25/02. Extended appellee's brief due date is 4/24/02. Extended argument week as early as 6/10/02. (by AH) (cr17) [01-1093]
Order Document for Later Delivery

2/19/02 Appellant Irving Mason in 01-1093 motion to extend time to file appellant's brief FILED (w/pfs). [2022799-1] (to AA) (cr17) [01-1093]
Order Document for Later Delivery

12/28/01 Notice to counsel re: Motion order issued on 12/28/01. (cr17) [01-1093]
Order Document for Later Delivery

12/28/01 Order FILED GRANTING motion for extended time to file brief [1983836-1] by Appellant Aldo Mitchell, endorsed on motion form dated 12/14/01. Extended appellant's brief due date is 2/22/02. Extended appellee's brief due date is 3/25/02. Extended argument week as early as 5/6/02. (by AH) (cr17) [01-1093]
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12/14/01 Appellant Aldo Mitchell in 01-1093 motion to extend time to file brief FILED (w/pfs). [1983836-1] (to AA) (cr17) [01-1093]
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10/12/01 Notice to counsel re: Motion order issued on 10/12/01. (cr17) [01-1093]
Order Document for Later Delivery

10/12/01 Order FILED GRANTING motion for extended time to file appellant brief [1941212-1] by Appellant Aldo Mitchell, endorsed on motion form dated 10/4/01. Extended appellant's brief due date is 12/24/01. Extended appellee's brief due date is 1/25/02. Extended argument week as early as 3/11/02. (by AH) (cr17) [01-1093]
Order Document for Later Delivery

10/4/01 Appellant Aldo Mitchell in 01-1093 motion to extend time to file brief FILED (w/pfs). [1941212-1] (to AA) (cr17) [01-1093]
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9/4/01 Attorney: Charles LAVINE CJA: 20 Voucher (for docket number 01-1093) is being tracked under voucher # 19483 (bfm) [01-1093]
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9/4/01 Attorney: Charles LAVINE CJA: 20 Voucher (for docket number 01-1101) is being tracked under voucher # 19473 (bfm) [01-1101]
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8/16/01 Copy of Court Reporter Acknowledgment filed. (cr17) [01-1093]
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7/25/01 Copy of Court Reporter Acknowledgment filed. (cr17) [01-1093]
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7/24/01 Notice to counsel re: Motion order issued on 7/24/01. (cr17) [01-1093]
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7/24/01 Order FILED GRANTING motion for extended time to file brief [1896958-1] by Appellant Aldo Mitchell, endorsed on motion form dated 7/19/01. Extended appellant's brief due date is 9/28/01. Extended appellee's brief due date is 10/29/01. Extended argument week as early as 12/10/01. (by AH) (cr17) [01-1093]
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7/19/01 Appellant Aldo Mitchell in 01-1093 motion to extend time to file brief FILED (w/pfs). [1896958-1] (to AA) (cr17) [01-1093]
Order Document for Later Delivery

7/16/01 Attorney Vernon Broderick for Appellee USA in 01-1093, motion for summary affirmance pursuant to ANDERS filed with proof of service. [1893182-1] (to Cal. Team) (cr17) [01-1093]
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6/25/01 Attorney Charles Lavine for Appellant James Brown in 01-1101 motion to be relieved as attorney pursuant to ANDERS filed with proof of service. [1879670-1] (to Cal. Team) (cr17) [01-1101]
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6/25/01 Attorney Steven A. Feldman for Appellant James Brown in 01-1093, motion to be relieved as attorney pursuant to ANDERS filed with proof of service. [1879666-1] (to Cal. Team) (cr17) [01-1093]
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6/25/01 Appellant James Brown in 01-1093 ANDERS v. California brief and appendix filed (w/pfs) including Appellant James Brown. Response to Anders brief due on 7/9/01. (cr17) [01-1093]
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6/25/01 Appellant James Brown in 01-1093 sealed pre-sentence report received. (cr17) [01-1093]
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6/18/01 Order FILED GRANTING motion to permitting assigned counsel to recieve assistance from other counsel [1869791-1] by Appellant Irving Mason, James E. Newman, Esq. is appointed to assist counsel of record pursuant to the Criminal Justice Act, endorsed on motion form dated 6/11/01. (cr17) [01-1093]
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6/14/01 Record on appeal index (Irving Mason) in lieu of record filed. (cr17) [01-1093]
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6/14/01 Record on appeal index in lieu of record filed. (cr17) [01-1093]
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6/14/01 CJA voucher issued to counsel: Norman Reimer for Irving Mason) [01-1093] (cr17) [01-1093]
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6/11/01 Appellant Irving Mason in 01-1093 motion to recieve assistance from other counsel FILED (w/pfs). [1869791-1] (to AA) (cr17) [01-1093]
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5/31/01 Notice to counsel re: New CJA Scheduling Order issued on 5/31/01. (cr17) [01-1093]
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5/31/01 New CJA scheduling order number: 3 filed. New record on appeal due date is 6/20/01. New Appellant brief due date is 7/30/01. New appellee brief due date is 8/30/01. New response to Anders brief due date is 8/13/01. New argument week as early as 10/15/01. (cr17) [01-1093]
Order Document for Later Delivery

5/7/01 The CAPTION PAGE for this appeal has been AMENDED. (cr17) [01-1093]
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4/27/01 Copy of notice of appeal and district court docket entries on behalf of Appellant Irving Mason in 01-1249 filed. [01-1249] (cr17) [01-1249]
Order Document for Later Delivery

4/24/01 CJA voucher issued to counsel: Steven Feldman for James Brown) [01-1093] (cr17) [01-1093]
Order Document for Later Delivery

4/20/01 Notice to counsel of schedule order filed 4/20/01. (cr11) [01-1093]
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4/20/01 Attorney Charles Lavine for James Brown in 01-1093 is relieved as counsel. Steven A. Feldman for Appellant James Brown is CJA attorney assigned. (cr11) [01-1093]
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4/20/01 New CJA scheduling order number: 2, appointing Steven A. Feldman, Esq. as counsel for the appelalnt, James Brown, filed. New record on appeal due date is 5/18/01. New Appellants' brief due date is 6/22/01. New appellee brief due date is 7/23/01. New response to Anders brief due date is 7/6/01. New argument week as early as 8/27/01. (AH) (cr11) [01-1093]
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4/20/01 CJA counsel has been assigned. (cr11) [01-1093]
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4/20/01 The CAPTION PAGE for this appeal has been AMENDED. (to reflect the consolidation of the appeals 01-1093 and 01-1101) (cr11) [01-1093]
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4/20/01 LEAD case flag set. (cr11) [01-1093]
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4/20/01 Notice to counsel of motion order filed 4/19/01. (cr11) [01-1093]
Order Document for Later Delivery

4/19/01 Order FILED GRANTING motion to consolidate appeals [1833771-1], GRANTING motion for Charles Lavine, Esq. to be relieved as attorney [1833771-2], GRANTING motion for appointment of CJA attorney [1833771-3] by Appellant James Brown, endorsed on motion form dated 4/12/01. Appeals in 01-1093 and 01-1101 are consolidated; New counsel shall be appointed pursuant to the Criminal Justice Act. (AH) (cr11) [01-1093]
Order Document for Later Delivery

4/12/01 Appellant James Brown motion to consolidate with docket #: 01-1101, for Charles Lavine, Esq. to be relieved as attorney and to appoint new CJA attorney FILED (w/pfs). [1833771-3] (original motion filed in 01-1101) (cr11) [01-1093]
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4/12/01 Letter received from attorney Charles Lavine re: motion submitted in 01-1101 to be relieved as counsel, that his also wishes to be filed in 01-1093. (cr17) [01-1093]
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3/21/01 Record on appeal index in lieu of record filed. (cr17) [01-1093]

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3/8/01 CJA voucher issued to counsel: Charles Lavine for
James Brown [01-1093] (cr17) [01-1093]
Order Document for Later Delivery

3/5/01 Notice to counsel re: CJA Scheduling Order issued
on 3/5/01. (cr17) [01-1093]
Order Document for Later Delivery

3/5/01 Scheduling order no. 1 filed, continuing counsel:
Charles Lavine pursuant to CJA. Record on appeal
due on 3/26/01. Appellant brief joint appendix due
on 4/25/01. Appellee brief due on 5/25/01.
Response to Anders brief due on 5/9/01. Argument
as early as week of 7/9/01. (cr17) [01-1093]
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2/15/01 Copy of notice of appeal and district court docket
entries on behalf of Appellant James Brown filed.
[01-1093] (cr17) [01-1093]
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TO ORDER COPIES OF ANY DOCUMENTS LISTED ABOVE, CALL WESTLAW COURTEXPRESS
1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply).

END OF DOCUMENT